

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

ANDREW L. COLBORN,

Plaintiff

NETFLIX, INC.,
CHROME MEDIA, LLC, f/k/a
SYNTHESIS FILMS, LLC,
LAURA RICCIARDI, and
MOIRA DEMOS,

Case No. 19-CV-484

Defendants.

**MOTION FOR AN ORDER COMPELLING INITIAL DISCLOSURES
PURSUANT TO FED.R.CIV.PRO. 26(a)**

Plaintiff, by and through his undersigned counsel, hereby respectfully moves the Court, pursuant to the Federal Rules of Civil Procedure and specifically Federal Rule of Civil Procedure 26(a), to compel the Defendants to provide initial disclosures, for the reasons set forth as follows:

1. Counsel for the respective parties participated in a Rule 26(f) conference on May 14, 2020, *see* Dkt #141, p.1, following an Order by the Court that the conference be completed by June 1, 2020. Dkt #134, p. 1. Prior to issuance of the Order compelling the conference, Plaintiff filed a motion requesting that Defendants be ordered to participate in a Rule 26(f) conference. Dkt #133.
2. Plaintiff served initial disclosures on July 1, 2020. *See* Declaration of R. George Burnett at Ex. 1.

3. Defendants have refused to make initial disclosures for the reasons articulated in sections of the Joint Rule 26(f) report that were included at the request of Defendants' respective counsel. Dkt #141 at pp. 3-4.
4. It is not efficient to continue to delay the progress of this case by stymying all discovery pending the outcome of the serial motions to dismiss asserted by Defendants in these proceedings. Moreover, in support of their currently pending motion to dismiss, Defendants have selectively presented to the Court numerous materials that they apparently had in their possession relating to the broadcast, such as certain transcripts of depositions of other witnesses taken in the Avery civil lawsuit. *See, e.g.*, Dkt #120-12, 120-16, 120-17, 120-19. In order to provide for a more complete opportunity for response, Plaintiff should have an opportunity to review all the materials that Defendants had in their possession to evaluate Defendants' assertion that their broadcasts were substantially true representations of that material. This material should be produced as part of the initial disclosures pursuant to Fed.R.Civ.Pro. 26(a)(1)(A)(ii).
5. As Plaintiff explained in his response to the Defendants' motion to dismiss, at a minimum, raw footage taken of Plaintiff that was edited for purposes of the broadcasts at issue in these proceedings is pertinent to Netflix's current motion to dismiss. *See* Dkt #131 at pp. 65-66. Plaintiff has alleged that Defendants distorted and falsified material in the broadcasts in a manner that appeared to make him less credible. *See, e.g.*, Dkt #105, p. 5 at ¶20. The original material can therefore be presented to and considered by the Court in response to a motion to dismiss in the

Seventh Circuit. *See, e.g., Geinosky v. City of Chicago*, 675 F.3d 743, 745 n. 1 (2012).

6. Plaintiff has also served additional targeted discovery requests, which have not been answered to date. Plaintiff reserves the right to bring additional motions to compel as may be appropriate or necessary.

For these reasons, Plaintiffs respectfully request an order compelling Defendants to make initial disclosures pursuant to Rule 26(a) and to respond to Plaintiff's initial discovery requests.

Dated this 21st day of October, 2020.

SCHOTT, BUBLITZ & ENGEL, S.C.

By: /s/ April Rockstead Barker
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CERTIFICATION

I certify that I spoke with Leita Walker, counsel for Netflix, Inc., in a good-faith effort to resolve, limit and/or streamline discovery issues in dispute on October 20, 2020, by telephone. Based on that conversation, Plaintiff has, at least for the present time, removed from the focus of this motion another request for discovery that was served on Netflix, Inc.

I also certify that I spoke with Kevin Vick, counsel for Chrome Media, Laura Ricciardi, and Moira Demos, by telephone on October 21, 2020, in a good-faith effort to resolve discovery issues between the parties. However, it appears that at present, the parties' positions as to the initial declarations remain as outlined in the Joint Rule 26(f) report (Dkt #141 at pp. 1-4.)

/s/ April Rockstead Barker
April Rockstead Barker